

The Endangered Species Listing Program



Tooth Cave ground beetle (*Rhadin persephone*), an endangered insect from Texas

USFWS photo by Wyman Meinzer

The Endangered Species Act of 1973 (ESA) gives the Secretary of the Interior responsibility for making a very important decision: determining whether to place an animal or plant on the Federal list of endangered and threatened species. This responsibility is delegated to the Director of the U.S. Fish and Wildlife Service (FWS). The Director has authority to approve all petition findings, listing proposals, and final listing determinations.

But how exactly does a species become listed under the ESA? The process is cumbersome, complex, and generally poorly understood. It can happen two different ways: through the petition process or through the candidate assessment process. The ESA provides that any interested person may petition the Secretary of the Interior to add a species to, or to remove a species from, the list of endangered and threatened species. Through the candidate assessment process, FWS biologists identify species as listing candidates. (See "The Candidate Conservation Program" in *Bulletin* Vol. XXIV No. 5.) Both processes may result in a species being proposed for Federal listing under the ESA.

The Basis for Listing

Under the ESA, the following factors determine whether or not a species should be listed as endangered or threatened:

- the present or threatened destruction, modification, or curtailment of the species' habitat or range;
- overutilization for commercial, recreational, scientific, or educational purposes;
- disease or predation;

- the inadequacy of existing regulatory mechanisms; and
- other natural or manmade factors affecting the species' continued existence.

The Listing Proposal

Procedures for listing vulnerable plants and animals under the ESA have become increasingly rigorous over the years. Currently, the process works this way: When we have enough scientific information (either through the petition process or the candidate assessment program) to indicate that listing is warranted, FWS biologists in the appropriate Field Office draft a proposed listing rule. (For foreign species, the proposed rule is drafted by the FWS Office of Scientific Authority in Washington, D.C.) The listing proposal provides background information on the species (taxonomy, historic and current range, population information, habitat requirements, etc.), a summary of the threats faced by the species, a determination and/or designation of critical habitat if appropriate, examples of available conservation measures, and a preview of actions that would be prohibited (as well as actions that would *not* be prohibited) if the species were to be listed.

Following a review in the appropriate FWS Regional Office, the draft proposal is sent to the Washington Office, where it undergoes further review by FWS and Interior Department personnel. After any necessary changes are made, the listing proposal goes to the Director for approval and signature. The listing proposal is then published in the *Federal Register*.



San Joaquin kit foxes (Vulpes macrotis mutica)

Photo by B. Moose Peterson/WRP

So what does it mean to be listed?

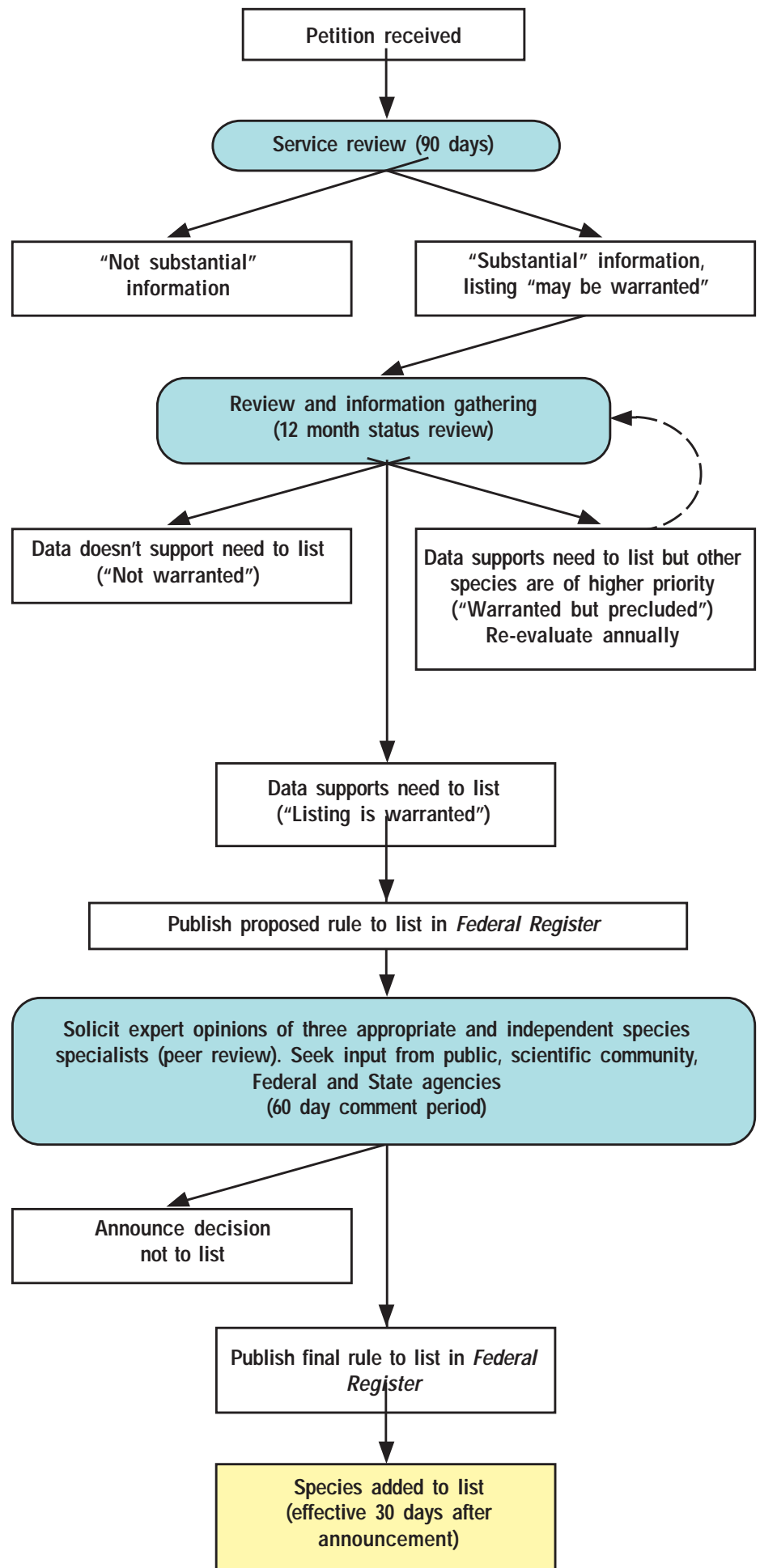
Among the conservation benefits authorized for threatened and endangered plants and animals under the ESA are: protection from being jeopardized by Federal activities; restrictions on take and trafficking; a requirement that the FWS develop and implement recovery plans for listed species under U.S. jurisdiction; authorization to seek land purchases or exchanges for important habitat; and Federal aid to State and Commonwealth conservation departments with cooperative endangered species agreements. Listing also lends greater recognition to a species' precarious status, encouraging conservation efforts by other agencies (foreign, Federal, State, and local), independent organizations, and concerned individuals.

Section 7 of the ESA directs Federal agencies to use their legal authorities to carry out conservation programs for listed species. It also requires these agencies to ensure that any actions they fund, authorize, or carry out are not likely to jeopardize the survival of any endangered or threatened species, or to adversely modify its designated critical habitat (if any). When an agency finds that one of its activities may affect a listed species, it is required to consult with the FWS to avoid jeopardy. If necessary, "reasonable and prudent alternatives," such as project modifications or rescheduling, are suggested to allow completion of the proposed activity. Where a Federal action may jeopardize the survival of a species that is *proposed* for listing, the Federal agency is required to "confer" with the FWS (although the recommendations resulting of such a conference are not legally binding).

Additional protection is authorized by section 9 of the ESA, which makes it illegal to take, import, export, or engage in interstate or international commerce in listed animals except by permit for certain conservation purposes. The ESA also makes it illegal to possess, sell, or transport any listed species taken in violation of the law. For plants, trade restrictions are the same but the rules on "take" are different. It is unlawful to collect or maliciously damage any endangered plant on lands under Federal jurisdiction. Removing or damaging listed plants on State and private lands in knowing violation of State law, or in the course of violating a State criminal trespass law, also is illegal under the ESA. In addition, some States have more restrictive laws specifically prohibiting the take of State or federally listed plants and animals.

The Petition Process

Petitions are formal requests to list a species that require published findings. We (or the National Marine Fisheries Service for most marine species) must make a finding within 90 days of receiving a petition (to the extent practicable) as to whether there is "substantial information" indicating that the petitioned listing *may be* warranted. If this preliminary finding is positive, a status review is conducted. Within one year of receipt of the petition, we must make a further finding that the listing either *is* or *is not* warranted. A positive one-year finding can be incorporated into a proposed listing or, if a prompt proposal is precluded by other listing activities, the proposal may be deferred. These "warranted but precluded" proposals require subsequent one-year findings on each succeeding anniversary of the petition until either a proposal is undertaken or a "not warranted" petition finding is made.



The Public Review Process

Because the FWS wants all potentially interested parties to be aware of the listing proposal and have an ample opportunity to provide comments, a press release announcing the proposal is published in area newspapers, and personal contacts are made by Field Office, Regional Office, and Washington Office personnel. Cities and counties, State agencies, Federal agencies, Congressional offices, local organizations, and others are notified directly.

A 60-day public comment period begins once a listing proposal is published in the *Federal Register*. A public hearing must be held if one is requested within 45 days of publication of the proposed rule. Public meetings also may be held in areas where the species occurs to provide the public with information about the species and the proposed listing. The public comment period may be extended or reopened at any time; however, extensions must be within reason because the ESA requires the final listing determination to be completed within one year of the proposal's publication date.

Peer Review

By law, the FWS must base its listing decisions on the best scientific and commercial (trade) data available. To ensure that good science is part of the process, the FWS contacts several peer reviewers during the open comment period, provides them with the listing proposal, and asks them to review the document for scientific accuracy. Current FWS policy requires contacting at least three independent reviewers. They are free to comment on any aspect of the proposal, but they may also be asked to consider specific questions regarding the species' taxonomy or biology.

The Final Determination

The listing proposal has been published, the public has been notified, public hearings and/or meetings have

been conducted, leading scientific experts have provided peer review, and all comments have been addressed. What happens next? The final rule containing the listing decision is drafted, undergoes the same review process summarized above, is signed by the Director, and is published in the *Federal*

Register. A decision on whether to make the proposed listing final must be completed within 12 months from when the proposal is published. If the final decision is positive, the rule becomes effective 30 days after publication (to allow Congress to review the listing) and the species is officially added to the Federal endangered and threatened species list. Many innovative conservation tools have been developed in recent years to assist with the conservation of endangered and threatened species. The sooner imperiled species can be identified and conservation measures can be initiated, the greater the likelihood for recovery and eventual delisting.

Until recently, Dr. Nicholopoulos was Chief of the Branch of Conservation and Classification, part of the Division of Endangered Species in the FWS Arlington, Virginia, headquarters office. She is now the Field Supervisor for the FWS New Mexico Ecological Services Field Office in Albuquerque.



Chapman rhododendron
(*Rhododendron chapmanii*), an
endangered plant from Florida
Photo by E. LaVerne Smith/USFWS